IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12868 of 2007
With
SPECIAL CIVIL APPLICATION No. 12907 of 2007
With
SPECIAL CIVIL APPLICATION No. 12922 of 2007
With
SPECIAL CIVIL APPLICATION No. 16107 of 2007
To
SPECIAL CIVIL APPLICATION No. 16109 of 2007
With
SPECIAL CIVIL APPLICATION No. 16964 of 2007
To
SPECIAL CIVIL APPLICATION No. 16966 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANALAL DAYALJIBHAI THAKKAR - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioner(s) : 1,
MS FALGUNI PATEL, AGP for Respondents in SCA Nos. 12868, 12907 & 12922 of 2007, MR HEMANG PARIKH, AGP for Respondents in SCA Nos. 16107 to 16109 of 2007 and MR NEERAJ SONI, AGP for Respondents in SCA Nos. 16964 to 16966 of 2007.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 10/07/2007

ORAL COMMON JUDGMENT :

Rule. Ms. Falguni Patel and M/s. Hemang Parikh and Neeraj Soni, Ld. AGPs waive service of rule on behalf of respondents. At the request of learned advocates petitions are taken up for final hearing today.

2. In this group of petitions the common questions of fact and law are involved and, therefore, they are heard together and they are being disposed of by this common judgment. The petitioners are dealers in poppy capsules and they have been doing their business for the last many years. According to them, the business was being carried on in accordance with the terms of license issued under the provisions of the Bombay Prohibition Act as well as the Poisons Act, 1919. However, in or around April/May 2007 the shops were sealed and they were prevented from doing the business on the ground the licenses under the Poisons Act were cancelled. Earlier the petitioners had made applications either for renewal of licenses issued under the Poisons Act or for grant of fresh licenses, but that have been rejected on the ground that they had

committed default by dealing in the business of poppy capsules without license under the Poisons Act.

2. I have heard Mr. PJ Kanabar, learned advocate for all the petitioners and M/s. Neeraj Soni & Hemang Parikh and Ms. Falguni Patel, Ld. AGPs for the respondents in all the petitions. I have also perused the record of the petition. By order dated 27/6/2007 in all the matters the concerned authority i.e., District Magistrate, who is respondent no. 2 herein, rejected the applications for license solely on the ground that by selling poppy capsules without license under the Poisons Act, the petitioners had committed grave irregularity. It is submitted by Mr. Kanabar that these petitions deserve to be allowed solely on the ground of discrimination. He has drawn my attention to several orders passed by the same officer dated 30/6/2007 in support of his submission. He has further submitted that when other authorities under the Prohibition Act have issued licenses, there is no reason for respondent no. 2 not to issue the licenses and permit the petitioners to continue business. He has further submitted that the maintenance of the entire family of the petitioners is solely dependent on the income received from this business and if the petitioners are disallowed to do the business, the plight of their family members would be very miserable.

2.1. As against that, Ld. AGPs have submitted that the order of respondent no. 2 is in accordance with law and there is no need to disturb it. It is their submission that since the petitioners have committed grave irregularities, respondent no. 2 was justified in passing the impugned orders.

3. I have perused the orders dated 30/6/2007, copies whereof have been annexed to the petitions. Perusal of these orders clearly show that in similar circumstances and in identical cases respondent no. 2 has condoned the default and has granted licences to the applicants of those applications. If that be so, I do not see any earthly reason why the applications of the petitioners should have been rejected. This appears to be clear case of hostile discrimination and, therefore, the action of respondent no. 2 is arbitrary and is required to be quashed and set aside. On this sole ground the petitions deserve to be allowed. Hence I do not express my opinion on any other contentions that have been raised by Mr. Kanabar and in future if the necessity so arises the petitioners will be at liberty to agitate these contentions.

In view of the same, the impugned orders are hereby quashed and set aside. The petitioners shall now apply afresh to respondent no. 2 within one week from the date of this order and on receipt of the

applications, within 10 days thereof respondent no. 2 will take decision keeping in view that in cases of other applicants licences have been granted by order dated 30/6/2007. He shall also keep in view that the petitioners have been in this business either themselves or through their predecessors in business for the last many years and their families are solely dependent upon the livelihood earned from this business. If need be, the petitioners be heard personally by giving prior intimation. In the meanwhile the petitioners may not be prevented from doing the business. Rule made absolute. Considering the urgency, direct service is permitted.

[Akshay H Mehta, J.]

* Pansala.